

**LEVEL 3 - UNIT 4 – LAND LAW  
SUGGESTED ANSWERS – JANUARY 2017**

**Note to Candidates and Tutors:**

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the January 2017 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' reports which provide feedback on student performance in the examination.

**SECTION A**

1. (a) Trespass is an intrusion on land without the owner's permission. Trespass has infringed the landowner's rights in airspace above his land when there is intrusion into it at a height below that needed for his reasonable enjoyment. This is illustrated by the case of Bernstein v Skyviews (1978).
- (b) The court could order an injunction to stop the trespass or damages if injury has occurred.
2. A term of years absolute, otherwise known as a leasehold, is a legal estate. It may be for a fixed term or on a periodic basis. It can start when granted or up to 21 years in the future.
3. Candidates could give any two of the following examples:
  - Estate contract;
  - Puisne (i.e. second legal) mortgage;
  - Equitable mortgage;
  - Equitable easement;
  - Equitable lease;
  - Restrictive covenant;
  - Family home rights under the Family Law Act 1996 or Civil Partnership Act 2004.

4. Candidates should give any two of the following;
  - Absolute Freehold title, granted when the registrar is fully satisfied with the title;
  - Qualified Freehold title, which is rare and is granted subject to some defect noted in the land register;
  - Possessory Freehold title, granted when there is no proof of ownership as for example when the title deeds are lost. This class is often granted in cases of adverse possession, i.e. to squatters.
5. The right of survivorship arises when co-owners hold property as joint tenants. They own as a whole without separate shares. On the death of one co-owner the survivor(s) remain the owners of the whole. The deceased co-owner cannot leave any share in the property by will. (This contrasts with tenants in common who have shares which can be left by will).
6. Candidates should identify the case of Re Ellenborough Park (1956) as the case which decided the essential characteristics of an easement. Candidates should then give a brief explanation of **two** of the following:
  - Two pieces of land: the dominant with the benefit of the easement and the servient with the burden of the easement;
  - The two pieces of land must be in separate ownership, as a person cannot exercise an easement against himself;
  - The easement must accommodate (i.e. benefit) the dominant land, not be just a personal benefit to the owner of it;
  - The easement must be capable of grant. This means that it must not be vague. In addition it must not be a claim for total possession of the servient land or impose expenditure on the servient owner.
7. Candidates can give any **two** of the following circumstances;
  - The covenant is obsolete
    - due to changes in the character of the neighbourhood or property or other circumstances;
  - Continued existence of the covenant
    - would prevent reasonable use of the land;
  - The person(s) entitled to the benefit of the covenant (i.e. covenantee)
    - has/have expressly or impliedly consented to its discharge;
  - Discharge or modification of the covenant would not injure
    - the person entitled to the benefit of the covenant.
8. The statutory requirements for a valid contract for the sale of land are contained in s.2 Law of Property (Miscellaneous Provisions) Act 1989. The contract must be in writing, contain all agreed terms and be signed by the parties to it.
9. The commonhold system applies to registered freehold property with shared common areas, such as blocks of flats. Candidates could give any one of the following features:
  - owners are unit-holders;
  - unit-holder is registered with absolute freehold title;
  - existence of a Commonhold Association;

- all unit-holders are members of the Commonhold Association.
10. An endowment mortgage is one taken out for a fixed period. During this time the borrower pays the lender regular payments only of interest on the loan. At the same time the borrower takes out a separate investment vehicle, such as an insurance policy on which premiums are paid to the insurance company. This is intended to pay off the mortgage loan at the end of the mortgage period.
  11. Candidates should give a brief explanation of one of the following ways:
    - Necessity, where there is no other way to reach the dominant land, which would otherwise be landlocked. Mere inconvenience is not sufficient for an easement by necessity to arise;
    - By common intention, where the owners of both pieces of land must have intended before the transfer of the dominant land that an easement would be granted;
    - Under the rule in Wheeldon v Burrows (1879) where land is in common ownership before a sale of part and there is a quasi-easement i.e. the owner of both parts uses a facility, such as a path, from one part to another. The facility is continuous and apparent and necessary for the enjoyment of the part sold. On sale of that part, the facility becomes a full easement in favour of the part sold;
    - Under s.62 Law of Property Act 1925 where an informal licence is granted to the occupier of a piece of land over another piece of land by the owner of both pieces. On the sale of the part occupied, the informal licence becomes an easement over the part retained by the seller.

## SECTION B

### Scenario 1 Questions

1. In answering this question candidates should identify the issue of fixtures, defining a fixture as an item, previously a fitting (chattel) which is now fixed to land and so part of it. The tests of degree, purpose and permanence of annexation (fixing) are generally used to assess this. As a result of being part of the land, a fixture passes automatically to buyer on sale.  
  
Applying this to the scenario, the paving stones would be fixtures and Brenda is not entitled to take them. She can take the curtains and carpets which are not fixed, so are not fixtures. Candidates could illustrate the answer with reference to cases such as Holland v Hodgson (1872) and Botham v TSB Bank plc (1996).
2. Brenda could have supplied a Fittings and Contents form before the exchange of contracts. This lists items to be left or removed. The agreement of the buyer is needed to the removal of any fixtures so this form would show any fixtures to be taken.
3. This question requires candidates to identify the Agreement as a freehold covenant. The issue in the question is whether the burden stays with Brenda. Brenda was the original covenantor under the Agreement. Alan is the original covenantee. As such there was privity of contract between her and Alan, which remains. However, as she is no longer the landowner there is no real remedy against her.

4. (a) For the Agreement to be binding on David the following circumstances (which originated from the case of Tulk v Moxhay (1848)) must be present:
- The covenant must be restrictive (i.e. negative);
  - The covenant must show the intention for the burden to pass on to a later owner (this is presumed under s.79 Law of Property Act 1925);
  - The covenant must benefit the land of the covenantee;
  - It must be registered against the burdened land.
- (b) In this case, while the wording of the covenant shows the intention to benefit Alan's land, the covenant itself is a positive one. This is because it requires action to be taken. Cases such as Austerberry v Oldham -Corporation (1885) show that the burden of positive covenants does not pass. So the necessary circumstances do not exist and David is not bound.
5. This wording makes the covenant 'negative in form but positive in substance'. This means that while the covenant appears to be restrictive it is still positive in meaning as positive action is needed not to let the fence fall into disrepair. So the answer would be no different.

## Scenario 2 Questions

1. (a) Candidates should recognise that Ellen would only be able to claim a share in the house on the basis of a trust interest in the property held in Mark's name. As she did not contribute to the initial purchase the only claim would be under a constructive trust. This requires a common intention or agreement between her and Mark that she would have a share. On the facts of the scenario there does not seem to be any express intention. Following cases such as Lloyds Bank v Rosset (1991) her work of redecoration and household chores would be an insufficient contribution for an inferred common intention from conduct. Therefore, she does not have a share in the house or the right to occupy it as a beneficiary under some form of trust.
- (b) If Mark and Ellen were married she would have the spouse's right of occupation under the Family Law Act 1996.
2. Laura can claim a share on the basis of a resulting trust. This occurs where a person contributes, other than as a gift, to the initial purchase price of a property held in the name of another person. A case such as Bull v Bull (1955) illustrates resulting trusts. In this scenario, Laura made a contribution to Mark's purchase and emphasised that her contribution was not a gift.
3. (a) Her share would be valued on a proportionate basis. It will be the same proportion of the current house value as her contribution bore as a proportion to the initial purchase price.
- (b) She can apply to the court for an order for sale under s.14 Trusts of Land and Appointment of Trustees Act 1996. She can apply as she is a beneficiary under a trust.

4. The factors which the court would consider are set out in s.15 Trusts of Land and Appointment of Trustees Act 1996. Candidates should select only those which are relevant to Laura in the scenario situation, applying them to the scenario facts as follows:
  - The intention for which the property was bought: it was bought as a home for Mark;
  - The purpose for which the property is held: it is still held for that purpose;
  - The interests of a secured creditor: it appears that the property is still subject to the mortgage to Kempston Finance Company Ltd.
5. Candidates should recognise that, as there is a trust for Laura held by Mark as a sole trustee, overreaching is necessary. The sale must be by two trustees. This will allow the buyer to take free of Laura's interest, which will be transferred from the land to the purchase money held by the trustees. To overcome the objection Mark needed to appoint a co-trustee to sell and receive the purchase money with him.

### **Scenario 3 Questions**

1. The property has unregistered title. Ownership must be proved by production of the title deeds or a copy of them in the form of an epitome of title. The deeds must start with a 'good root of title'. This is a conveyance or mortgage at least 15 years old. The right of way deed, although over 15 years old, is not a conveyance, so is not a good root of title. Since George has owned the property for 40 years, the conveyance of it to him when he purchased would be the good root of title.
2. Candidates should give various disadvantages from the buyer's point of view, applying them to the scenario facts. Any five of the following could be chosen :
  - Examination of title deeds is necessary: these may be unclear or missing, as in the present case;
  - It can be difficult for a buyer to discover third party interests;
  - An accurate plan of the property may be lacking, as in this case where no title deeds are apparent;
  - Unregistered title has no State guarantee of accuracy or compensation for error, unlike registered title;
  - Due to the need for investigation, conveyancing may be slower;
  - It may also be more expensive due to this need.
3.
  - (a) Imran's lawyer must apply to the Land Registry for first registration of title to the property within two months of completion of the purchase.
  - (b) The reason is because, since 1990, first registration of unregistered land is compulsory after a disposition such as a sale.
  - (c) Imran would have a title information document, which is a copy of the land register. This shows the three registers (Property Register, Proprietorship Register, Charges Register) and the title plan.

4. (a) Candidates should recognise the issue of a 'clog on the equity of redemption'. The borrower has a right to redeem his mortgage. A term interfering with this is invalid. A case such as Fairclough v Swan Brewery (1912) could be referred to in the answer to show that an undue postponement of the redemption date is an example of a 'clog'.
- (b) The power of sale, which is in every mortgage deed, can be exercised under s.103 Law of Property Act 1925 in various circumstances. One of these is that a condition of the mortgage is broken by the borrower. Here Imran has broken the condition about letting the property so the Bank did have the right to sell.
- (c) A lender has a duty of care when exercising the power of sale. It can choose its own time to sell (as the Bank proposes to do here). However, there is a duty to act in good faith and in particular to obtain the best market price so the Bank would not be acting correctly if it sold at a lower price.
- (d) A mortgage guarantor is liable to the same extent as the primary borrower. So if the sale does not raise enough to cover the mortgage debt, Kemal could be pursued in debt for the outstanding sum.